

**MINUTES**  
**Newport Business License**  
**Work Group Meeting**  
**City Manager Conference Room**  
**Tuesday, July 22, 2014**

**Ad Hoc Members Present:** Ralph Busby, Mark Saelens, Bob Berman, and Rod Croteau.

**City Staff Present:** City Manager Spencer Nebel, Community Development Director (CDD) Derrick Tokos, Community Services Officer Dustin Kittel, Police Chief Mark Miranda, Finance Department Staff Member Kay Keady, and Executive Assistant Wanda Haney.

Tokos distributed some handout materials, which were an email from Kay Keady relating to the business license renewal process and a markup version of the code with the changes that the group has talked about to date. Nebel noted that the committee had a new charge as of last night's Council meeting; and he handed out Ordinance No. 2058 repealing and re-enacting the Code pertaining to Taxicabs.

Busby called the meeting to order at 1:05 p.m.

**Discussion Regarding Threshold for the Size of Business Needing a License:** Busby said this to him gets to the crux of the matter. That's the biggest thing that bothers him about the whole deal. Who is a business? What are we going after here? Is it based on size, location, type, retail or wholesale? There are twenty different aspects to define it. He thinks it is left wide open in the definition as it exists, which basically defines a business as a business doing a business activity. Busby said this is something that we need to attack, and he doesn't think it's simple. He said that he doesn't know the right answer. If we try to incorporate everybody, then we have enforcement issues because of people doing business out of their homes, transient businesses, and on and on.

Saelens said that he started his business at the first of the year. He got a prorated business license, and now it's up for renewal. Although he lives in Newport, he's not planning on operating his business in the city limits. Miranda said that his wife operates a telecommunications business out of their home. It has nothing to do with Newport; so they were told that she didn't need a business license. Saelens asked, when they are working out of their home, how we would ever know if it has to do with anything within the UGB. Kittel said that's not a reason to say a license is not needed just because we don't know. Miranda said it's like dog licenses; we don't know if they have one until there is a dog bite and we investigate. Kittel said if they get a ticket, it's on the records and we know they're there. Saelens said he knows we are not getting everybody. If the definition is more wide-reaching and we get a certain amount of compliance, maybe that's good enough. Croteau said it's worthwhile to know what is going on in the City regardless of size. The business license fees are not very odious. Saelens said he will renew his license for the whole year in the likelihood that he will do a job somewhere in the city limits. Kittel said it needs to be established as a business in the city or doing business in the city. He gave the example of the MAC Tools truck that sells out of the truck and will need a business license as opposed to Costco that sells elsewhere but then just delivers in the area and is not transacting business in the city. Berman said in his case he does independent contracting and computer programming; and he has one client in the city and the other nine are not. He works out of his home and everything is electronic. Kittel said that there is the 20 hour clause. For example if a roofer from out of the area does a 5-hour job and that is all they do that year, they fall under that exemption. Nebel said that Miranda's wife is working out of her home in telecommunications; but his wife is self-employed and has to get a business license. Even though all of her clients are out of town, she's running her businesses from Newport. Saelens said maybe it's a business if you are making an income from what you are doing within the UGB. Nebel said maybe it's if you are self-employed. Tokos said if you are doing telecommunications, you are just employed by some other business. Busby said that needs to be incorporated in the definition in the ordinance to clarify that issue. Kittel said that would be the definition; anybody actively transacting business within city limits. Delivery would be an exception.

Berman said maybe to make it broader and put in exclusions like deliveries, and home offices with no customers in Newport; but we would have to think about them all. Tokos said we have to think about the enforceability of the code. Kittel said "actively take part in a transaction of sales and services within city limits." Busby asked what about fishermen that catch fish and only deliver them to the processing plant. Saelens said there is already state taxation involved. Why differentiate if it's a business or not. If that same person embellishes their income by selling off the docks, then he sees that as a business. Tokos said it gets delicate though. A number of fishing families have an office in Newport and conduct business there. And, if we really get to sale and transaction in Newport, the fish processors could argue they are not doing transactions here because they are shipping out. Croteau thought that operating in Newport is the determinant. Miranda said fishing boats do have an impact on city services. Saelens said maybe we say that everything is a business sort of and focus on exemptions. Kittel said then everybody wants to be added as an exemption, and the definition gets so long. Saelens said some sort of upfront definition about service and income in the community.

Tokos agreed with the exemption route. He said when you write exemptions into the definition, it gets confusing. It's better to have a definition of what a business is and put the exemptions in their own section. Berman asked about a definition that includes everybody and then pull out. If you aren't on the pull-out list, you are a business. Miranda asked what about charitable organizations that have offices. Busby said they are supposed to put in an application, which they pay for; they just don't pay for a license. Saelens said that the group talked about that a couple of meetings ago that by having them sign up; yes they pay the application fee but not the business license; that provides us with a mechanism to better understand what is going on. Tokos said that is captured in the code here from a prior conversation; clean up the language for not-for-profit entities. Berman said that we definitely want them to register even if we don't charge them the fees.

**Review Business License Renewal and Outreach Process.** Because Kay Keady was able to briefly join the meeting, Nebel suggested moving on to talking about the process for renewing customers and what we do. Tokos noted that he had handed out the email Keady had sent him. Berman asked her if she sends bills; and Keady confirmed that she does around July 3<sup>rd</sup>. She said then it depends on their payment. If they make full payment right away by the end of July, they only get one invoice. She does three invoices; and the other two, which are to assess penalties if they haven't paid, are sent around August 15<sup>th</sup> and in September. Berman said the ordinance says 10% and another 10%. Keady thought it was 15%. Berman said it says up to a maximum of 20% of license fee. Keady thought it was 10% and then 15%. Berman said he was going to say why limit it to 20% so it accumulates. Keady said if it's only the \$95 fee, it adds up to somewhere around \$18.35. Kittle said they would have to refile because they are late, so he asked if they have to repay the \$25. Berman said that is what the ordinance says.

Miranda said once the third letter goes out, if there is no response, then Keady notifies Kittle who goes out and discusses it with the business. They will either come down and pay the fees or pay the citation. Kittle said that they worked out that by the time Keady comes to him, the business is so delinquent that he just writes them a ticket. If they pay all fees before the ticket goes to court, plead no contest and pay the fine; then there's no more time wasted. He said they know they are out of compliance by that time. Busby asked if Kittle knew the rate of failure to renew. Kittle said he finds that some are not in business any longer. Some are contractors who won't come in to renew until they find out if they get another job in Newport. He thought we had a very high compliance rate. He finds that a number of them are contractors that have come in for a while to do a job and then are gone.

Tokos said that purging and updating the list where we already have them engaged at some point is one thing. But something to talk about is how to get people in in the first place so they are on the list; whether it's a contractor or others who have never obtained a business license. Kittle said this is one part that has to be set in the ordinance. He said most are recognized in August and September; the rest of the year we deal with them as they show up. Berman said it needs to conform to the wording in the ordinance. Do you have to reapply if you're even one day late? He said the bills didn't go out until late. Keady said as she discussed, the software doesn't allow her to send them sooner. If she does, it becomes reimbursable last year. She has to close one year and then do it. So it has taken a few days after June 30<sup>th</sup>. Berman said the code needs to be adjusted to reflect reasonable billing procedure. Kittle said when they come in to pay a late fee, they might as well have to pay the \$25.

Keady said that one thing she notices a lot is that we will have businesses only work on weekends; and we don't have a code enforcement officer working then. She sees them; but who would be responsible to talk to them? Kittle said there has been talk about the new CSO working Tuesday through Saturday. At least that's the thought. Busby asked how many nonprofits are supposed to register. Keady said they are all registered; she doesn't send out anything after that. They pay the \$35 initially. She said it just depends. There was an onslaught that came in. Are there new ones? Probably. Croteau thought nonprofits should do renewals in case the contact changes. Kittle said we could ask them if they are still in business and are there any changes in contacts. Miranda added, and tell them their fee is \$0. Keady said we could be asking for changes in addressing so everybody gets their renewal. Maybe the business hasn't moved, but the mailing address has changed. Berman said that maybe if their license lapses, they are subjected to paying the application fee and the submission of a new application to make sure we have the current information. Filling out the paperwork becomes part of the penalty. Keady said she would attach the new application to the old one and at least we would have the updated information. Miranda said that every renewal that goes out should be returning with updated information; who is in charge, who is the responsible party, who is second in line, etc. Kittle asked if the renewals say that; he noted that Toledo's does.

Keady said she is all for it; but sometimes it's very difficult to even get all of the information the first time. She noted that even our contractor at the Airport didn't want to give her his complete information. She said it can be an issue that they don't want to give out that information. Kittle said they have to register with the State. Croteau asked what kind of information they are not wanting to give. Keady said their birth date and driver's license number. She said she needs that for the Police Department to do a background check. Berman asked if a background check is ran on everybody for a business license. He said there is no reference to that in the ordinance. Keady said the Police Department signs off on the business license applications and are doing background checks on everybody. Miranda said they are capturing information for their information management system. They have to know who to contact. He's not sure they are running background checks. Nebel said the background checks may be for a transient business to make sure they are legitimate; he didn't know the method. Kittle said you wouldn't get that on a background check. Tokos said you can get the Contractor's information through the CCB; that's pretty straightforward. Croteau asked if it's clear that this is getting checked off. Miranda said at the bottom of the form is a line for the Police to check off.

Croteau said that in itself is possibly enough for the applicant to know the Police Department is checking it off so if they are running from the law, they better be careful. He thought that is enough.

Keady said as far as background checks; what's the business description. If it's a day care or senior care, they may want to do a background check. Berman thought that's a separate issue. It's either state regulations or endorsements for those types of businesses. Miranda said unless they find a warrant for their arrest, there is nothing the Police can do. Croteau said those types of operations require state certifications. Keady asked if we want copies of those. Berman said the code says they are required. Keady said maybe we should ask them. Tokos said that is flagged in prior discussion. Keady said she's thinking of an instance where we had a mobile company doing cleanup work after a storm. The business license asked for their driver's license, and she took a copy of it and put it with the business license. Sometime later the State Attorney General's office came in and had warrants out for those people. That was an instance where it was helpful that she had that driver's license. Berman said the ordinance doesn't say they have to provide their driver's license. It mentions things like phone numbers, email address, and addresses of the office and of the owner. Saelens asked if under the safety part, if we're authorizing a business and one part is that there is driving involved, don't we want to know they have a driver's license. Kittle said we had a carpet cleaner who had a string of DUIs, and he had to hire someone to drive his van. Saelens asked if we had a new applicant whose business requires transportation, wouldn't we want to know they were legitimate. Kittle said that doesn't mean they can't do business. They have employees that can drive so that doesn't keep them from having a business license. There are businesses that still have to go to the health department, and the OLCC, etc. They have to comply with everything else. Croteau said that the group did talk about a section in the code. Tokos confirmed that "fraud or misrepresentation being grounds for denial or revocation of the permit" is mentioned in the code. Berman said that the code states that a business license shall not be construed as a waiver of any other licenses imposed by state or federal agencies. Kittle said it could be like a contractor saying they got their business license and they didn't know they needed a CCB license.

Miranda said that he liked having the applicant provide state-required licenses before issuing any business licenses. Croteau thought it was important. Kittle asked if that wouldn't create a problem with the city licenses because it always has to be last then. They have to have their license from OLCC, the health department, or whatever, and can't get their city license until all of that is done. Busby said the city could give a temporary or contingent license. Miranda said a 60-day license. Tokos said that we have provisional or temporary in here. Kittle asked contingent on everything else. He noted that with the medical marijuana, legal counsel said be careful about requiring something that somebody may not have and we may be creating a liability for the city. They may sue. Tokos said that had to do with if we didn't verify they had it and issued a business license. If somebody got hurt, now the city is liable because we failed to follow procedure. He said like a contractor who didn't provide that, and they defrauded somebody. That person will come back on the city and say we were supposed to check this and didn't. Berman asked how the city is going to know what the other certifications are. He said there are requirements for a hairdresser and also for a doctor. Miranda said you need an all-encompassing phrase. It was mentioned about the possibility that they will have it when they come in and then cancel it. Croteau said the 30-60 day provisional license will get around that. If they haven't provided it by then, the license terminates at that point. Kittle said if it starts getting into they need to provide proof, we assume responsibility then. Tokos agreed we need to be careful what we ask for. Make sure that information is coming in or you will be liable. Croteau said that came up with liability insurance. Nebel said it gets a bit tricky when we start asking for all documents when we don't know what all they need in order to conduct their business. Berman said they can add functions that may require additional certifications from the state and still have their business license. Kittle said you are required to have licenses. That says nothing you are doing is legal; you have to have other certifications. Saelens wondered if we can revoke their license. It was noted that the code states a city license may be denied or revoked by the City Manager for fraud or misrepresentation or failure to provide requested information. Berman asked, not like for the lack of a beautician's license for a beauty shop. Tokos said it's "you shall include your license number" (contractor's license number for example). They put down their number; and if it turns out that was invalid, it would be fraud and grounds for revocation. Kittle said if there is evidence that they are defrauding the public. Berman said or noncompliance with other laws. Tokos said if that was discovered, it's grounds.

Busby said that next time the group will take the code paragraph by paragraph. He said to read what Tokos provided and review it, and we'll talk about it line by line next time. He noted that also next time the group has to hit taxi cabs. He said also for the thresholds for businesses next time to think of suggestions. He thought that we need to reference exemptions rather than encompassing them in the definition.

**Discussion Regarding the Exemption for One Rental Unit:** Saelens said it's kind of a city standard at the coast. Knowing that this is a recreational area, a lot of people have a home at the beach that they rent out some of the time. Kittle said then they are renting. He asked how the Code Enforcement Officer is to know that is the only rental they have. They are in compliance until he discovers they have a second home. Berman said that is a vacation rental and requires a separate endorsement. This is talking about long-term. Kittle said the exemption is for one house; and there is no way to know how many other houses they own. Berman said it could be done. Kittle said with full-time business license enforcement. Saelens gave an example that he lives in Corvallis and he has a second home here that he rents part time. Kittle said that is a vacation rental; and month-to-month is what we are talking about here. Busby said in the code it says rented for 30 days or more. You could rent to thirty different people for a day each. Nebel said we can do "one single tenant." Busby said "occupancies." Saelens said a lot of people are

stuck with two homes. Kittle thought we're out of the big foreclosure period. Maybe they could liquidate it. If they can't pay the \$95 a year, then it's clear that they probably need to liquidate it. Croteau agreed.

Tokos thought it should be left as an exemption. He said it's common and gets back to what Saelens was talking about. They have moved out of town to take a position elsewhere; so, trying to make ends meet, they are renting it to someone on a month-to-month basis now. Where you have property managers with five, ten, or fifteen houses that's an income type of deal. Kittle asked so if a business loses money for the year, that means they don't need a business license. Berman said this is a very specific exemption for this type of environment. He talked about a home in his neighborhood that the owner built for their retirement; and until they reach retirement age, they are renting it on an annual lease. Berman said that he doesn't consider that as a business for them. They are offsetting their mortgage payment until they are ready to move into it. Kittle said speaking from the code enforcement perspective; if it's a rental, it should be treated as a business. Berman asked how he is going to know. Kittle said he would look up the tax information. If the owner lives out of town, it looks like a rental. But he needs to know if they have two or more properties now.

Busby asked if there was a consensus. Berman thought if it's just one dwelling, there should be an exemption for that. Saelens thought that in Lincoln City that is what they came down to. Nebel said in Lincoln City they are talking about vacation rentals. We are talking about monthly rentals; and we should clarify that language to be one occupant staying for a month or more is an exemption. Miranda said he's in favor of whatever Kittle feels helps him do his job better. He said if they have a business license for a single rental that helps the Police Department for when they get called to that place in the middle of the night and don't know who owns it unless they have a business license. Saelens said that he sees somebody stuck with two homes, and they are not able to sell it; so they rent one to help make ends meet. Now they have to get a city business license, but they didn't have to register with the state as a business. Kittle said they have to declare income. Croteau thought the exemption should be removed. Busby said to keep thinking about it. He is one of those that owns one that he rents. He has mixed feelings. Kittle said also people get creative and put multiple homes in different names. Busby said we need to solve it some time.

**Confirmation of Revision Areas for Draft Ordinance Update.** Busby said to read and review the handout and we will discuss it next time. Tokos said out of the next meeting, he would like to have some direction for what the group would like to see revised language on. He said these are just targeted areas. He would like the group to break that down so staff can put some language together.

**Additional discussion for next meeting.** Busby said the other thing for discussion at the next meeting is the taxicab code. He recalled that it came about when the Toledo man wanted to get a taxicab license here. At that time the city was going to revise the ordinance; so we told him to wait until we had the revision. Now it's been six to nine months. That man hasn't come back; but at the time he raised a big stink. The existing company came in and testified what they wanted; and we held off on the revised ordinance because we were waiting for this guy. Now we have to go forward. Last night at the Council meeting, David Allen suggested sending this over to the business license committee. Saelens said we have to put some consideration into whatever we write up. He got an awkward feeling that the city was trying not to appear as if we only want one taxicab company in town. Miranda said that for four to five years, the ordinance was written for a monopoly. When it went to codification, that change was made. Saelens said the reason he says that, like any other business, he can see part of it is that you are making an investment in vehicles; although he doesn't see it the same as issuing a full franchise to haulers with millions of dollars invested in infrastructure. He wondered if someone comes in and wants to put a bicycle rickshaw on the Bay Front, is that a taxi or not. Busby said there is not a monopoly right now. The question is do we need special provisions for taxicabs. He can see how a background check is in the interest of public safety given the nature of the business. Tokos said he would be interested to see if we don't do it how the public safety is met. Is what the DMV does sufficient? Who is insuring that they are doing what they should? Busby noted that we don't do that for buses, trains, or airplanes. Miranda said that's because they have to have a CDL. Tokos said good information to have at the table would be to know the body that is looking at it for liability. Miranda said that they require insurance for the temporary cabs for the three days of the Seafood and Wine Festival.

Croteau asked if there were specific defects in the code pointed out or if it's just time for a revision. Busby recalled that there were some things pointed out. He noted that Peggy Hawker wrote the original revision; and he doesn't remember. Tokos said that he can talk to Hawker and have her highlight the issues so that we have something to work from; and we can look at the DMV thresholds. Berman asked if it's possible that we could require a CDL before issuing a license for a taxicab. A CDL is a higher level of training. Miranda agreed that a CDL is harder to get and requires a health certificate and a special driving test. It's also more restrictive as far as what your driving record looks like. Busby said we have to make sure we are not levying things on taxicabs that we're not on other things. For instance the city doesn't require extra things for charter boats or airplanes. Are we treating them on a level playing field? Miranda thought that Lincoln City doesn't have a special taxicab license. Croteau said that most cities of any size do. Busby said this isn't New York City, and we will have to consider what's in our best interest.

**Establish Next Agenda and Meeting Date.** The next meeting was scheduled for Wednesday, August 6<sup>th</sup> at 1:00 p.m. Topics of discussion will be one, to go through the code paragraph by paragraph to compile revisions; and secondly, to discuss updates to the taxicab code.

**Adjournment.** Having no further business, the meeting adjourned at 1:59 p.m.

Respectfully submitted,

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Wanda Haney  
Executive Assistant